

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 263 of 1986

With

FIRST APPEAL No. 264 of 1986

With

FIRST APPEAL No. 265 of 1986

With

FIRST APPEAL No. 267 of 1986

With

FIRST APPEAL No. 269 of 1986

With

FIRST APPEAL No. 270 of 1986

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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NEW INDIA ASSURANCE CO LTD - Appellant(s)

Versus

BAI GAURI DEVJI & 5 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
None present for the Respondents

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 06/09/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1.All these appeals are disposed of by this common judgment as they arise out of the impugned common judgment and award dated 26.8.1995 passed by the Motor Accident Claims Tribunal (Aux.) Rajkot District, Rajkot (for short "Tribunal") disposing of, in all, 15 Motor Accident Claim Petition Nos.308/82, 323/82, 325/82, 342/82, 343/82, 344/82, 353/82, 388/82, 389/82, 390/82, 391/82, 392/82, 398/82, 399/82 and 550/82.

2.On 18.5.1992 at 7.00 p.m. on Navalakhi-Morvi Road, Truck No.GRT 4027 driven by its driver turned turtle resulting death of 7 persons, including driver and causing injury to 14 persons. Six claim petitions i.e. M.A.C.P. Nos.308, 323, 325, 343, 344 and 399 of 1982

were filed by the legal heirs and representatives of the deceased persons, who died in the accident. They were travelling in the truck. The other claim petitions i.e. M.A.C.P. Nos.342, 353, 388, 389, 390, 391, 392, 398 and 550 of 1982 were filed by the injured persons. As stated earlier, by the impugned common judgment and award, the learned Tribunal came to the conclusion that the accident in question took place due to sole negligence of the driver of the truck. Accordingly, the Tribunal passed the award against the owner as well as the present appellant-insurance company of the Truck bearing No.GRT 4027.

3.It may be stated that the appellant-insurance company itself has not challenged the impugned common judgment and award passed by the learned Tribunal in favour of the claimants of M.A.C.P. Nos. 342, 388, 389, 390, 391, 392 and 550 of 1982. It may be stated that they had also filed First Appeal

Nos.266 and 268 of 1986 in M.A.C.P. Nos.343 and 353 of 1982 respectively against the impugned common judgment and award passed by the learned Tribunal where the amount was more than Rs.2,000/-. However, the said appeals were summarily dismissed by the Division Bench of this court at the admission stage because of the smallness of amount awarded to the claimants. In rest of the six petitions where the amount varies from Rs.15,200/- to Rs.68,000/-, present appeals of the Insurance Company have been admitted and by interim order the impugned judgment and award passed by the learned Tribunal is stayed on certain terms and conditions.

4.Learned counsel Mr.Mehta for the appellants relying on the judgment of the Hon'ble Supreme Court in case of **Mallawwa and others v. Oriental Insurance Co. Ltd. Reported in 1999 ACJ 1** submitted that the question involved in all these appeals is squarely covered in favour of the appellant-Insurance

Company, therefore, the impugned common judgment and award passed by the learned Tribunal qua the appellant-Insurance Company be quashed and set aside and it may be held that the Insurance Company was not liable.

5. In the instant case unfortunate accident took place way back on 18.5.1982 i.e. almost 25 years before and the poor claimants have yet not received the amount which was awarded to them. Therefore, we are of the considered opinion that as held by the Hon'ble Supreme Court in case of ***Oriental Insurance Co. Ltd. vs. Nanjappan and Ors. Reported in AIR 2004 SC 1630*** appellant-Insurance Company may recover the amount which it has to pay to the claimants from the owner of the vehicle. This judgment of the Hon'ble Supreme Court was followed by the Hon'ble Apex Court in its latest decision in case of ***National Insurance Co. Ltd. v. Kusum Rai and Ors. Reported in (2006)4 SCC 250.***

6. However, it was tried to be submitted by Mr. Mehta for the appellant-Insurance Company that such an order could only be passed by the Hon'ble Apex Court in its powers under Article 136 of the Constitution of India, but not by this court. In support of his submission, Mr. Mehta has placed reliance on para 19 of the judgment in case of Kusum Rai (supra). On facts of the case of Kusum Rai (supra), the Hon'ble Supreme while declining to exercise its jurisdiction under Article 136 of the Constitution of India, directed the Insurance Company to recover the amount from the owner in the same manner as directed in Nanjappan's case (supra).

7. The amount awarded in the instant case is not more. The legal heirs and representatives of the poor victims of the accident of 1982 have yet not got anything because of the interim relief granted by this court while admitting these appeals. Therefore, following the aforesaid judgments of the Hon'ble Supreme

Court in cases of Nanjappan and Kusum Rai (supra), we direct the appellant-Insurance Company to recover the amount from owner in the same manner as directed by the Apex Court in case of Nanjappan (supra).

8. With these observations and directions, all the appeals are disposed of. Interim relief granted in all the appeals stands vacated. No order as to costs.

9. Now, the learned Tribunal shall disburse the amount awarded to the claimants, as per its award as early as possible.

10. At this stage, a request was made by learned counsel Mr. Mehta for the appellants to stay this order for a period of 8 weeks. The request is refused because the poor persons have suffered so far for almost 25 years after the unfortunate accident.

(B. J. SHETHNA, J.)

(M. D. SHAH, J.)